

BILL NO. 5 2007  
AN ORDINANCE

**AN ORDINANCE OF THE CITY OF READING AUTHORIZING THE  
EXECUTION OF A CABLE FRANCHISE AGREEMENT BETWEEN  
THE CITY AND COMCAST OF NEW MEXICO/PENNSYLVANIA LLC**

**SECTION 1.** Pursuant to the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996 (hereinafter collectively referred to as the "Cable Act"), the regulations of the Federal Communications Commission and Pennsylvania law, the City is authorized to grant franchises to construct, operate and maintain a cable system utilizing public rights-of-way and properties within the City's jurisdiction.

**SECTION 2.** Pursuant to the provisions of the Cable Act the City of Reading will grant a non-exclusive and revocable franchise (exhibit "A") to Comcast of New Mexico/Pennsylvania LLC, for a period of fifteen (15) years, replacing a cable franchise agreement that the City entered into with Berks Cable on December 24, 1985 and is subject to City Ordinance 101-85 entitled "City of Reading Cable Television Ordinance".

**SECTION 3.** This ordinance shall be effective ten (10) days after its adoption and approval by the Mayor, or repassage by City Council over the Mayor's veto, in accordance with Section 219 of the City of Reading Home Rule Charter.

Enacted Jan 22, 2007

  
President of Council


Attest:

  
City Clerk



(Cohen Communications/Council Staff)

Submitted to Mayor: 

Date: 1-23-07

Received by the Mayor's Office: 

Date: 1-23-07

 Approved by Mayor: 

Date: 1-23-07

Vetoed by Mayor: \_\_\_\_\_

Date: \_\_\_\_\_

I, LINDA A. KELLEHER, City Clerk of the City of Reading, Pa., do hereby certify, that the foregoing is a true and correct copy of the original 22<sup>nd</sup> passed by the Council of the City of Reading, on the 22<sup>nd</sup> day of Jan, A. D. 20 07. Witness my hand and seal of the said City this 22<sup>nd</sup> day of Jan, A. D. 20 07.

  
CITY CLERK

**EXHIBIT "A"**

**CABLE FRANCHISE AGREEMENT**

**BETWEEN**

**CITY OF READING**

**AND**

**COMCAST OF NEW MEXICO/PENNSYLVANIA, LLC.**

## **TABLE OF CONTENTS**

**Page**

<b>SECTION 1</b>	<b>GRANT OF FRANCHISE.....</b>	<b>2</b>
1. 1.1	GRANT OF AUTHORITY	2
2. 1.2	TERM OF FRANCHISE	3
3. 1.3	NON-EXCLUSIVITY	3
4. 1.4	POLICE POWERS	3
5. 1.5	NO WAIVER OF RIGHTS	3
6. 1.6	COMPETITIVE EQUITY	4
<b>SECTION 2</b>	<b>COMPENSATION TO THE CITY</b>	<b>4</b>
7. 2.1	FRANCHISE FEES	4
8. 2.2	QUARTERLY PAYMENTS	4
9. 2.3	QUARTERLY REPORTS	5
10. 2.4	AUDITS	5
<b>SECTION 3</b>	<b>SYSTEM CONSTRUCTION, OPERATION AND MAINTENANCE</b>	<b>6</b>
11. 3.1	TECHNICAL REQUIREMENT	6
12. 3.2	AREA TO BE SERVED	7
13. 3.3	PERMITS	8
14. 3.4	REPAIRS AND RESTORATION	8
15. 3.5	SYSTEM MONITORING	9
16. 3.6	SERVICE AREA MAPS	10
17. 3.7	BUILDING MOVES	10
18. 3.8	DISCONNECTION AND RELOCATION	10
19. 3.9	EMERGENCY REMOVAL OF EQUIPMENT	11
20. 3.10	TREE TRIMMING	11
<b>SECTION 4</b>	<b>SYSTEM SPECIFICATIONS AND STATE-OF-THE-ART</b>	<b>11</b>
21. 4.1	SYSTEM SPECIFICATIONS	11
22. 4.2	STATE-OF-THE-ART	12
<b>SECTION 5</b>	<b>CUSTOMER SERVICE STANDARDS</b>	<b>13</b>

23.5.1	OFFICE HOURS AND AVAILABILITY BY CUSTOMER REPRESENTATIVES	13
24.5.2	INSTALLATIONS AND SERVICE CALLS	14
25.5.3	NOTICES	15
26.5.4	BILLING	16
27.5.5	CUSTOMER COMPLAINT PROCEDURES	16
28.5.6	DISCONNECTION	17
29.5.7	CREDIT FOR SERVICE INTERRUPTIONS	17
30.5.8	PRIVACY	17
SECTION 6	SERVICES TO THE COMMUNITY	19
31.6.1	SERVICES TO COMMUNITY FACILITIES	19
32.6.2	PUBLIC, EDUCATIONAL AND GOVERNMENTAL CHANNELS	19
SECTION 7	REGULATION BY THE CITY.....	22
33.7.1	RIGHT TO INSPECT	22
34.7.2	RIGHT TO CONDUCT COMPLIANCE REVIEW	23
35.7.3	RIGHT TO REGULATE RATES	23
36.7.4	RESERVED AUTHORITY	23
SECTION 8	REPORTING REQUIREMENTS	23
37.8.1	QUARTERLY FRANCHISE FEE REPORT	23
38.8.2	ANNUAL FINANCIAL REPORT	24
39.8.3	CUSTOMER COMPLAINT REPORT	24
40.8.4	GOVERNMENT REPORTS	24
SECTION 9	FRANCHISE VIOLATIONS, DAMAGES AND REVOCATION	25
41.9.1	VIOLATIONS	25
42.9.2	LIQUIDATED DAMAGES	25
9.3	PERFORMANCE BOND.....	27
9.4	REVOCATION .....	28
SECTION 10	PROGRAMMING	29
43.10.1	CHANNEL CAPACITY	29
44.10.2	BROADCAST CHANNELS	29
45.10.3	SIGNAL SCRAMBLING	29

46. 10.4 CONTINUITY OF SERVICE	29
47. 10.5 PARENTAL CONTROL CAPABILITY	30
48. 10.6 SERVICE TIER REQUIREMENTS	30
49.	
SECTION 11 LIABILITY AND INDEMNIFICATION	30
50. 11.1 INDEMNIFICATION	30
51. 11.2 INSURANCE	30
SECTION 12 FRANCHISE TRANSFER AND RENEWAL	31
52. 12.1 TRANSFER, ASSIGNMENT OR CHANGE IN CONTROL	31
53. 12.2 RENEWAL	32
SECTION 13 MISCELLANEOUS	33
54. 13.1 FORCE MAJEURE	33
55. 13.2 REMOVAL OF SYSTEM	33
56. 13.3 NOTICES	34
57. 13.4 EQUAL EMPLOYMENT OPPORTUNITY	35
58. 13.5 CAPTIONS	35
59. 13.6 GOVERNING LAW	35
60. 13.7 ENTIRE AGREEMENT	35
61. 13.8 SEVERABILITY	35
62. 13.9 CHANGE OF LAW	36
63. 13.10 NO THIRD-PARTY BENEFICIARIES	36
64. 13.11 APPLICABILITY OF AGREEMENT	36
SECTION 14 DEFINITIONS	36
EXHIBIT A	LIST OF DESIGNATED LOCATIONS FOR CABLE SERVICE
EXHIBIT B	LIST OF DESIGNATED LOCATIONS FOR CABLE MODEM INTERNET SERVICE

## **CABLE FRANCHISE AGREEMENT**

This Cable Franchise Agreement (hereinafter referred to as the "Agreement") is executed as of the 1st day of January, 2007 (hereinafter referred to as the "Effective Date") by and between the City of Reading, a municipality located in Berks County, Pennsylvania (hereinafter referred to as the "City") and Comcast of New Mexico/Pennsylvania, LLC. (hereinafter referred to as "Comcast").

**WHEREAS**, pursuant to the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996 (hereinafter collectively referred to as the "Cable Act"), the regulations of the Federal Communications Commission (hereinafter referred to as the "FCC") and Pennsylvania law, the City is authorized to grant franchises to construct, operate and maintain a Cable System utilizing public rights-of-way and properties within the City's jurisdiction; and

**WHEREAS**, Comcast currently holds a cable franchise from the City by virtue of a cable franchise agreement that the City entered into with BerksCable on December 24, 1985 and is subject to City Ordinance 101-85 entitled "City of Reading Cable Television Ordinance"; and

**WHEREAS**, Comcast has requested a renewal of its franchise to maintain, construct, operate, and upgrade its Cable System over, under and along the aforesaid rights-of-ways for use by the City's residents; and

**WHEREAS**, the aforesaid rights-of-way used by Comcast are public properties acquired and maintained by the City and the right to use said rights-of-way is a valuable property right; and

**WHEREAS**, the City desires to protect and manage the aforesaid rights-of-way, ensure future technical improvements to maintain a technologically-advanced Cable System, require high standards of customer service, obtain complimentary services for its public buildings, require improvements to its public, educational and governmental channels, receive franchise fees for Comcast's use of the City's rights-of-ways as provided by federal law, establish certain reporting requirements and provide for the current and future cable-related needs of its residents; and

**WHEREAS**, the City conducted a comprehensive ascertainment process with respect to cable franchise renewal, including, but not limited to, a community

needs assessment, a technical audit, and a franchise fee review, all of which resulted in reports that have been provided to Comcast; and

**WHEREAS**, the City held public hearings on July 20, 2005 and September 21, 2005 on the subject of cable television franchise renewal, including reviewing the cable operator's past performance and identifying the City's future cable-related community needs; and

**WHEREAS**, the City has determined that Comcast has the financial, legal and technical ability to provide Cable Services to Subscribers located in the City; and

**WHEREAS**, the City, after affording the public notice and opportunity for comment, has determined that the public interest would be served by renewing Comcast's franchise according to the terms and conditions contained herein;

**NOW THEREFORE**, in consideration of the mutual promises contained herein and intending to be legally bound hereby, the City and Comcast agree as follows:

## **SECTION 1** **GRANT OF FRANCHISE**

### **1.1 GRANT OF AUTHORITY**

Pursuant to the Cable Act, the regulations of the FCC and Pennsylvania law, the City hereby grants a non-exclusive and revocable franchise to Comcast, authorizing and permitting Comcast to construct, operate, and maintain a Cable System in the City's public rights-of-way.

Subject to the terms and conditions contained herein, the City hereby grants to Comcast the right to construct, extend, install, operate, maintain, upgrade and rebuild a Cable System to provide Cable Service, including such wires, cables, fiber, conductors, ducts, conduits, amplifiers, pedestals, attachments and other property and equipment as are necessary and appropriate to the operation of the Cable System in, under, over, along, across and upon the streets, lanes, avenues, alleys, sidewalks, bridges, highways and other public places and rights-of-way under the jurisdiction of the City, including property over

which the City has a sufficient easement or right-of-way, for the purpose of reception, transmission, amplification, origination, distribution or redistribution of video, audio, and other electronic signals and impulses as permitted by applicable law.

## **1.2 TERM OF FRANCHISE**

The term of this Agreement shall be for a period of fifteen (15) years commencing on the Effective Date and expiring on \_\_\_\_\_, unless the franchise is terminated prior to the expiration date in accordance with the terms and conditions of this Agreement.

## **1.3 NON-EXCLUSIVITY**

This franchise granted to Comcast shall be non-exclusive. Nothing in this Agreement shall affect the right of the City to grant another franchise to construct, operate or maintain a Cable System or for any other purpose.

## **1.4 POLICE POWERS**

Comcast's rights under this Agreement are subject to the police powers of the City to adopt and enforce general laws and regulations necessary for the safety and welfare of the public. Such laws and regulations are separate and distinct from the terms and conditions contained in this Agreement.

## **1.5 NO WAIVER OF RIGHTS**

(a) No course of dealing between the City and Comcast, nor any delay on the part of the City in exercising any rights hereunder, shall operate as a waiver of any such rights of the City or acquiescence in the actions of Comcast in contravention of such rights, except to the extent expressly waived by the City.

(b) No course of dealing between the City and Comcast, nor any delay on the part of Comcast in exercising any rights hereunder, shall operate as a waiver of any such rights of Comcast or acquiescence in the actions of the City in contravention of such rights, except to the extent expressly waived by Comcast.

## **1.6 COMPETITIVE EQUITY**

(a) The City shall not grant an additional franchise to a competitive entity to construct, operate, or maintain a Cable System if such franchise, when taken as a whole upon consideration of its material obligations, is more favorable or less burdensome to the competitive entity than this Agreement is to Comcast. If the City grants an additional franchise to a competitive entity that, when taken as a whole upon consideration of its material obligations, is more favorable or less burdensome to the competitive entity, then the City and Comcast shall amend this Agreement to provide Comcast with the benefit of such more favorable or less burdensome material obligations.

(b) In the event an application for a new franchise for Cable Service is submitted to the City proposing to serve Subscribers within the City, then the City shall notify Comcast in writing of the submission of the application.

## **SECTION 2 COMPENSATION TO THE CITY**

### **2.1 FRANCHISE FEES**

Comcast shall pay to the City an amount equal to five percent (5%) of the Gross Revenues derived from the operation of its Cable System to provide Cable Service in the City. The term "Gross Revenues" is defined in Section 14 "Definitions" below. Comcast shall not deduct or otherwise credit against the franchise fee any tax, fee or assessment of general applicability. The City may amend the franchise fee upon sixty (60) days written notice to Comcast provided that the franchise fee may not exceed five percent (5%). In the event that federal law is amended to authorize a franchise fee higher than five percent (5%), the City may, at its discretion, direct in writing that Comcast to pay a higher franchise fee. A copy of the Resolution or Ordinance authorizing the franchise fee rate adjustment shall accompany such written notice.

### **2.2 QUARTERLY PAYMENTS**

Franchise fee payments to the City under this provision shall be computed

at the end of each calendar quarter and shall be due and payable within thirty (30) days after the end of each calendar quarter and forty-five (45) days after the close of the fourth calendar quarter of the year. Specifically, payments shall be due and payable on or before April 30 (for the first quarter), July 31 (for the second quarter), October 31 (for the third quarter), and February 15 (for the fourth quarter) of each year. No acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any payment be construed as a release of any claim the City may have for additional sums payable under this Agreement.

### **2.3 QUARTERLY REPORTS**

Each franchise fee payment shall be accompanied by a written report containing an accurate statement of Comcast's Gross Revenues received for Cable Services for the quarter in connection with the operation of Comcast's Cable System and a brief report showing the basis for computation of fees. The report shall contain a line item for every source of revenue received and the amount of revenue received from each source. The report shall be verified by a financial representative of Comcast.

### **2.4 AUDITS**

(a) On an annual basis, upon thirty (30) days prior written notice, the City shall have the option to conduct an independent audit or franchise fee review of Comcast's records reasonably related to the sources, amounts and computation of Gross Revenues in accordance with Generally Accepted Accounting Principles ("GAAP"). Any such audit or franchise fee review shall occur within sixty (60) months from the date the City receives a franchise fee payment, after which period any such payment shall be considered final. Such records shall be kept or made available to the City at the notice location for Comcast specified in Section 13.3 below.

(b) In the event of an alleged underpayment, the City shall provide Comcast with a written statement indicating the basis for the underpayment. If the audit or franchise fee review reveals that there have been no underpayments, the City shall provide a written notice to Comcast indicating that no underpayments were found and that the audit or franchise fee review is closed. Comcast shall have thirty (30) days from the receipt of the statement regarding an alleged underpayment to provide the City with any written objection to the

results of the audit or franchise fee review, including any substantiating documentation. Based on this exchange of information, the City shall make a final determination of the underpayments, if any, within sixty (60) days of Comcast's objection and shall provide Comcast with written notice of the determination. If Comcast disputes the City's final determination, it may submit the dispute to a mutually agreed upon mediator within thirty (30) days of receiving the City's written notice of the determination. In the event that Comcast fails to submit the matter to mediation within the required time period, the City's final determination shall be binding on Comcast. If Comcast submits the matter to mediation and an agreement is not reached within ninety (90) days of the submission to mediation, either party may bring an action to have the disputed amount determined by a court of competent jurisdiction.

(c) Any franchise fee payment due to the City as a result of the audit or franchise fee review shall be paid to the City by Comcast within sixty (60) days from the date the City notifies Comcast of its final determination, or if the matter is submitted to mediation or litigation, within sixty (60) days from the final disposition of such action. If the audit or franchise fee review shows that franchise fees have been underpaid, then Comcast shall pay the underpaid amount and monetary fines often percent (10%) of the underpayment. If franchise fees have been underpaid by five percent (5%) or more, then Comcast shall also pay the total cost of the audit or franchise fee review. Once the franchise fees, plus any monetary fines, are paid by Comcast, the City shall have no further rights to audit, review, or challenge the franchise fee payment for that time period.

### **SECTION 3**

#### **SYSTEM CONSTRUCTION, OPERATION AND MAINTENANCE**

##### **3.1 TECHNICAL REQUIREMENT**

(a) Comcast shall operate, maintain, construct and extend the Cable System so as to make available high quality signals, clear resolution, and reliable delivery of one-way and two-way Cable Services for all programming services throughout all parts of the City where the density requirements of Section 3.2 herein are met. The Cable System shall meet or exceed any and all technical performance and other technical standards of the FCC, the National Electrical Safety Code, the National Electric Code and any other applicable federal laws and regulations.

(b) The Cable System shall provide signals that are free from all types of interference, including, but not limited to, co-channel interference. Should the City provide written notice to Comcast that it has received a record of complaints from subscribers of video reception problems related to interference, then Comcast shall take all reasonable actions necessary to remove or minimize the interference problem.

(c) Stand-by power at the headend(s) shall be provided for a minimum of eight (8) hours in the event of an outage. The power supplies serving the nodes and distribution shall be capable of providing power for not less than four (4) hours in the event of an electrical outage. Stand-by power must activate automatically upon the failure of commercial utility power.

### **3.2 AREA TO BE SERVED**

(a) Service shall be offered to every dwelling occupied by a person requesting Cable Service situated within one hundred twenty-five (125) feet aerial distance of the cable plant provided that Comcast is able to obtain from the property owners any necessary easements and/or permits in accordance with Section 621 (a) (2) of the Cable Act. Comcast shall extend the Cable System into all areas within the City, including the City's Central Business District, where there is a minimum density of thirty (30) dwelling units per linear plant mile of aerial cable, and fifty (50) dwelling units per underground mile of cable, calculated from the end of the nearest trunk line. Comcast shall complete said extensions within three (3) months of notification to Comcast by the City that an area has met the minimum density standard set forth herein (weather permitting). Comcast's obligation hereunder shall be subject to the timely performance of walk-out, make ready and location of all underground utilities.

(b) Comcast may elect to extend service to any commercial establishment requesting Cable Service provided that Comcast is able to obtain from the property owners any necessary easements and/or permits in accordance with Section 621 (a) (2) of the Cable Act. Comcast's obligation hereunder shall be subject to the timely performance of walk-out, make ready, and location of all underground utilities.

(c) Comcast may elect to provide Cable Service to areas not meeting the above density and distance standards. Comcast may impose an additional charge in excess of its standard installation charge for any service installation requiring a drop in or line extension in excess of the above standards. Any such

additional charge shall be computed on a time plus materials basis to be calculated on that portion of the installation that exceeds the standards set forth above.

(d) If all of the transmission and distribution facilities of all of the public utilities in any area of the City are underground, Comcast shall place the transmission and distribution facilities of its Cable System underground, provided that such underground locations are capable of accommodating Comcast's facilities without technical degradation of the Cable System's signal quality. Comcast shall not be required to construct, operate, or maintain underground any ground-mounted appurtenances such as Subscriber taps, line extenders, system passive devices, amplifiers, power supplies, and/or pedestals.

### **3.3 PERMITS**

Comcast shall apply to the City for all generally-applicable required permits and shall not undertake any activities in the public rights-of-way subject to a permit without receipt of such permit, issuance of which shall not be unreasonably withheld by the City. Comcast shall pay any and all required permit fees. Comcast shall file all required construction plans. Notwithstanding the above, Comcast shall not be required to obtain permits or file construction plans for individual drop connections to Subscribers or instances of routine maintenance or minor repair to its Cable System.

### **3.4 REPAIRS AND RESTORATION**

(a) Whenever Comcast or any agent, including any subcontractor, takes up or disturbs any pavement, sidewalk or other improvement of any public or private way or place, the same shall be replaced and the surface restored in as good condition as before the disturbance within ten (10) business days of the completion of the disturbance, weather permitting. Upon failure of Comcast to comply within the time specified and the City having notified Comcast in writing of the restoration and repairs required, the City may cause proper restoration and repairs to be made and the expense of such work shall be paid by Comcast upon demand by the City along with any liquidated damages applied by the City in accordance with Section 9 "Franchise Violations, Damages and Revocation" below.

(b) Whenever Comcast or any agent, including any subcontractor, shall install, operate or maintain equipment, cable, or wires, it shall avoid damage and

injury to property, including structures, improvements and trees in and along the routes authorized by the City, except as may be approved by the City if required for the proper installation, operation and maintenance of such equipment, cable, or wires. Upon written notice, Comcast shall promptly repair and restore any private property that is damaged as a result of construction, installation, repair or maintenance of the Cable System within ten (10) business days. In the event of inclement weather, Comcast may request additional time from the City and property owner to complete the repairs or restoration. Assent for additional time from the City and property owner to complete such repairs or restoration shall not be unreasonable withheld.

(c) Comcast's operating, construction, repair and maintenance personnel, including all agents and subcontractors, shall be thoroughly trained in the use of all equipment and the safe operation of vehicles. Comcast's operating, construction, repair and maintenance personnel shall follow all safety procedures required by all applicable federal and state laws and regulations. All areas of the Cable System shall be routinely inspected and maintained so that conditions that could develop into safety hazards for the public and/or operating and maintenance personnel may be corrected before they become a hazard. Comcast shall install and maintain its wires, cables, fixtures, and other equipment in such a manner as shall not interfere with any installations of the City or any public utility serving the City.

(d) Whenever Comcast or any agent, including any subcontractor, shall disturb any pavement, sidewalk or other public property in order to perform any underground activity, it shall utilize the Pennsylvania One Call System prior to any such disturbance. Comcast shall adhere to all requirements of the Pennsylvania Underground Utility Line Protection Act.

(e) All structures and all lines, equipment and connections in, over, under, and upon streets, sidewalks, alleys, and public and private ways and places of the City, wherever situated or located, shall at all times be kept and maintained in a safe and suitable condition and in good order and repair.

### **3.5 SYSTEM MONITORING**

Comcast shall conduct periodic signal monitoring in accordance with the requirements of the FCC. Such capability shall enable Comcast to monitor the signal quality of all channels delivered on the Cable System, including the Public, Educational, or Governmental Channels.

### **3.6 SERVICE AREA MAPS**

Upon written request, Comcast shall provide to the City for its exclusive use complete set of Comcast service area maps of the City, on which will be shown those areas in which its facilities exist and the location of all streets. The maps shall also designate where the cable wires and other equipment are aerial and where they are underground. These maps shall be provided to the City in hardcopy and, if requested and available, electronic format. Updated maps shall be delivered to the City within thirty (30) days after a request is made.

### **3.7 BUILDING MOVES**

In accordance with applicable laws, Comcast shall, upon the request of any person holding a building moving permit issued by the City, temporarily raise or lower its wires to permit the moving of the building. Comcast shall be given at least thirty (30) days advance notice to arrange for such temporary wire changes. The expense of such temporary raising or lowering of its wires shall be paid to Comcast by the person, firm or corporation requesting the same. If the building to be moved is owned or operated by the City, Comcast shall raise or lower its wires at no cost to the City.

### **3.8 DISCONNECTION AND RELOCATION**

(a) Comcast shall, at no cost to the City, protect, support, temporarily disconnect, relocate in the same street, or other public way and place, or remove from any street or any other public way or place, any of its property as required by the City or its designee by reason of traffic conditions, public safety, street construction, change or establishment of street grade, or the construction of any public improvement or structure.

(b) In requiring Comcast to protect, support, temporarily disconnect, relocate or remove any portion of its property, the City shall treat Comcast the same as, and require no more of Comcast than, any similarly situated entity.

### **3.9 EMERGENCY REMOVAL OF EQUIPMENT**

(a) If, at anytime, in case of fire or other disaster in the City, it shall be necessary, in the reasonable judgment of the City or its agent, to cut or move any of the wires, cable or equipment of the Cable System, the City shall have the right to do so without cost or liability, provided that, wherever possible, the City shall give Comcast notice and the ability to relocate wires, cable or other equipment.

(b) In requiring Comcast to temporarily disconnect, relocate or remove any portion of its property, the City shall treat Comcast the same as, and require no more of Comcast than, any similarly situated entity.

### **3.10 TREE TRIMMING**

Comcast, or its agents, including subcontractors, shall have the authority to trim trees upon and overhanging public streets, alleys, sidewalks and the public rights-of-way so as to prevent the branches of such trees from coming in contact with the wires, cables or other equipment of Comcast in accordance with the City's Code of Ordinances, Chapter 25, Part 1, Shade Trees, and other generally-applicable laws and regulations. Comcast shall reasonably compensate the City or other property owner for any damages caused by such tree trimming or removal. If Comcast or its agents, including subcontractors, wish to cut down and remove any tree or trees as may be necessary for the installation and maintenance of its equipment, it shall apply to the City for permission and, if permission is granted, shall perform such cutting and removal in accordance with the regulations of the City.

## **SECTION 4**

### **SYSTEM SPECIFICATIONS AND STATE-OF-THE-ART**

#### **4.1 SYSTEM SPECIFICATIONS**

(a) Comcast has designed, constructed and shall maintain a Cable System covering the City that utilizes fiber optic backbone connections from headend to hubs, hubs to hubs, and hubs to nodes. This Cable System shall be built for digital television standards with a bandwidth no less than 750 MHz with addressable technology with no less than one hundred twenty-five (125) video channels received for digital or analog transmission and shall allocate sufficient

portion of said bandwidth to deliver reliable two-way Cable Services. The Cable System shall be capable of providing high definition television signals and high speed Internet access via cable modem.

(b) Comcast reserves the right to alter, adjust, modify, rebuild, upgrade, redesign, or otherwise reconfigure the Cable System at any time during the term of the Agreement, in accordance with the provisions of this Agreement. Notwithstanding the above, Comcast agrees that no alteration, adjustment, modification, rebuild, upgrade, redesign, or other reconfiguration of the Cable System shall have the effect of reducing the technical capabilities of the Cable System from those that exist on the Effective Date of this Agreement.

## **4.2 STATE-OF-THE-ART**

(a) Comcast and the City acknowledge that the technology of Cable Systems is an evolving field. Comcast's Cable System in the City shall be capable of offering Cable Services that are comparable to other Cable Systems owned and managed by Comcast or its Affiliate Entities in the Counties of Berks, Chester, and Montgomery in the Commonwealth of Pennsylvania ("Comparable Systems") pursuant to the terms of this section. The City may send a written notice to Comcast, not to exceed one request every two (2) years, requesting information on Cable Services offered by such Comparable Systems.

(b) If the identified Cable Services are being offered by Comcast and/or its Affiliated Entities to at least forty percent (40%) of the total Subscribers in the Comparable Systems, then the City may require that Comcast make such Cable Services available in the City. Should the City determine that Comcast shall provide such Cable Services, then the City and Comcast shall enter into good faith discussions to negotiate a schedule for deployment of such Cable Services. The discussions shall take into consideration the benefits from the provision of such Cable Services, the cost of implementing them in the City, the technical and economic feasibility of implementing such improvements, and the impact, if any, on Subscriber rates.

## **SECTION 5**

### **CUSTOMER SERVICE STANDARDS**

## **5.1 OFFICE HOURS AND AVAILABILITY BY CUSTOMER REPRESENTATIVES**

(a) Comcast shall maintain a business office that is conveniently located and which shall be open during Normal Business Hours. The term "Normal Business Hours" is defined in Section 14 "Definitions" below.

(b) Comcast shall provide and maintain a toll free telephone access line that will be available to Subscribers twenty-four (24) hours a day, seven (7) days a week. Trained representatives shall be available to respond to customer inquiries during Normal Business Hours. After Normal Business Hours, the telephone inquiries may be answered by a service or an automated response system. Inquiries received after Normal Business Hours must be responded to by a trained company representative on the next business day.

(c) Under Normal Operating Conditions, telephone answering time by a customer representative, including wait time, shall not exceed thirty (30) seconds after the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90) percent of the time under Normal Operating Conditions measured on a quarterly basis. The term "Normal Operating Conditions" is defined in Section 14 "Definitions" below.

(d) Under Normal Operating Conditions, the customer shall receive a busy signal in response to a telephone call less than three (3) percent of the time.

(e) Comcast shall not be required to acquire equipment or perform surveys to measure compliance with the telephone answering requirements above unless a historical record of complaints indicates a clear failure to comply. If the City determines, after receiving complaints itself and/or receiving a record of complaints made to Comcast in accordance with Section 8 below, that there is a clear failure to comply with the telephone and/or electronic mail answering requirements above, the City shall notify Comcast in writing that it must measure its compliance with these requirements for the next ninety (90) days and report to the City with its results.

## **5.2 INSTALLATIONS AND SERVICE CALLS**

(a) Comcast shall maintain a competent staff of well-trained employees

sufficient to provide adequate and prompt service to its Subscribers. Comcast shall require that any employee or agent, including any subcontractor, who personally visits any residential dwelling shall display a photo identification badge. Comcast shall require that any vehicle used for installation, operation or maintenance activities by any Comcast employee or agent, including any subcontractor, shall prominently display the Comcast or "cable contractor" logo.

(b) Standard installations will be performed within seven (7) business days after an order has been placed. "Standard" installations are those aerial installations that are located up to one hundred twenty-five (125) feet from the existing distribution system.

(c) Excluding conditions beyond its control, Comcast shall begin working on a Service Interruption promptly and in no event later than twenty-four (24) hours after the interruption becomes known and shall diligently pursue to completion. Notice of a Service Interruption of a single Subscriber shall give rise to this obligation on behalf of Comcast. The term "Service Interruption" is defined in Section 14 "Definitions" below. All other service calls not affecting public health, safety or welfare shall occur within a maximum of forty-eight (48) hours after notice to Comcast or scheduled at the convenience of the customer and shall be diligently pursued to completion.

(d) Upon scheduling of appointments with the customer for installations, service calls and other activities, Comcast shall provide the customer with either a specific time or an "appointment window" of a maximum of four (4) hours during Normal Business Hours. Comcast may schedule service calls and installation activities outside of Normal Business Hours for the express convenience of the customer.

(e) Comcast may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment. If, at any time, an installer or technician is running late, an attempt to contact the customer must be made prior to the time of the appointment. If the appointment must be rescheduled, it must be done so at a time that is convenient for the customer.

### **5.3 NOTICES**

(a) Comcast shall provide written notice to each Subscriber upon initial

subscription, at intervals not more than one (1) year thereafter to each Subscriber, and at any time upon request, regarding each of the following areas:

- (1) Products and services offered;
- (2) Prices and options for programming services and conditions of subscription to programming and other services;
- (3) Channel positions and information regarding programming carried on the Cable System such that the programming information corresponds to the channel positions;
- (4) Installation and service maintenance policies;
- (5) Instructions on how to use the Cable Service and any converters;
- (6) Billing and customer complaint procedures;
- (7) Comcast's address, telephone number and office hours;
- (8) A notice of Subscriber privacy rights as required by federal law.

(b) Comcast shall notify Subscribers and the City in writing of any changes in rates, programming services or channel positions a minimum of thirty (30) days in advance of such changes, provided that such changes are within the control of Comcast. Comcast shall not be required to provide prior notice to Subscribers of any rate change that is the result of a regulatory fee, franchise fee or any other fee, tax, assessment or charge of any kind imposed by any federal agency, the Commonwealth of Pennsylvania or the City on the transaction between Comcast and the Subscriber.

(c) In accordance with applicable federal law, Comcast shall maintain a file available to the public containing all written notices provided to Subscribers pursuant to the requirements contained herein by Comcast during the previous twelve (12) months.

#### **5.4 BILLING**

- (a) Bills shall be clear, concise and understandable. Bills must be fully

itemized, with itemizations including all applicable service tiers and if applicable any installation or repair charges. Bills shall state the billing period, including an effective due date, the amount of current billing and any relevant credits or past due balances.

(b) Comcast shall not assess late fees for non-payment of a current bill until at least thirty (30) days have elapsed since the mailing of the bill by Comcast.

## **5.5 CUSTOMER COMPLAINT PROCEDURES**

Comcast shall establish clear written procedures for resolving all customer complaints, which shall include at least the following:

(a) Comcast shall provide the customer with a written response to a written complaint received by the local business office via the United States mail within thirty (30) days of its receipt. Such response shall include the results of its inquiry into the subject matter of the complaint, its conclusions based on the inquiry, and its decision in response to the complaint.

(b) If the City is contacted directly about a customer complaint, it shall notify Comcast promptly and in writing. When Comcast receives such notification, the time period for Comcast to respond as required above shall commence.

(c) Any Subscriber who, in good faith, disputes all or part of any bill sent by Comcast has the option of withholding the disputed amount, without a late fee, until Comcast has investigated the dispute in good faith and has made a determination that the amount is owed provided that:

- (1) The Subscriber provides a written complaint to Comcast in a timely fashion and includes identifying information;
- (2) The Subscriber pays all undisputed charges; and
- (3) The Subscriber cooperates in determining the appropriateness of the charges in dispute.

(d) Comcast shall maintain customer complaint records, which shall contain the date each complaint is received, the name and address of the affected Subscriber, a description of the complaint, the date of resolution of the

complaint, and a description of the resolution.

## **5.6 DISCONNECTION**

Comcast may disconnect or terminate a Subscriber's service for cause:

(a) If at least sixty (60) days have elapsed from the due date of the bill that Subscriber has failed to pay; and

(b) If Comcast has provided at least ten (10) days written notice to the affected Subscriber prior to disconnection, which may be noted on the Subscriber's bill specifying the effective date after which Cable Services are subject to disconnection; and

(c) If there is no pending written dispute with Comcast regarding the bill;  
or

(d) If at any time and without notice, Comcast determines in good faith that Subscriber has tampered with or abused Comcast's equipment or services or is engaged in theft of Cable Service.

## **5.7 CREDIT FOR SERVICE INTERRUPTIONS**

In the event that there is a Service Interruption to any Subscriber for six (6) or more consecutive hours, upon receipt of written or credible oral request it shall grant such Subscriber a pro rata credit or rebate, on a daily basis, of that portion of the service charge during the next consecutive billing cycle, or, at its option, apply such credit to any outstanding balance that is currently due. Such credit shall be identified by Comcast on the Subscriber's next bill following the Service Interruption.

## **5.8 PRIVACY**

(a) Comcast shall respect the rights of privacy of every Subscriber and shall not violate such rights through the use of any device or signal associated with the Cable System. Comcast shall at all times comply with the privacy provisions of Section 631 of the Cable Act and all other applicable federal and state privacy laws and regulations. All references to privacy in this Section are

further subject to the provisions of Public Law 107-56 (October 26, 2001), Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, known as the "USA PATRIOT ACT."

(b) Comcast shall be responsible for complying with such privacy policy and shall at all times maintain adequate physical, technical and administrative security safeguards to ensure that personal Subscriber information is handled and protected strictly in accordance with this policy and all applicable laws and regulations.

(c) Absent a court order or requirement of federal law, neither Comcast nor its designee shall tap, monitor, arrange for the tapping or monitoring, or permit any person to tap or monitor, any cable, line, signal, input device, or Subscriber outlet or receiver for any purpose, without the prior written authorization of the affected Subscriber or user, provided, however, that Comcast may conduct system-wide or individually addressed "sweeps" solely for the purpose of verifying system integrity, checking for illegal taps, controlling return-path transmission, billing for pay services or monitoring channel usage in a manner not inconsistent with the federal law. Comcast shall report to the affected parties any instances of monitoring or tapping of the Cable System, or any part thereof, of which it has knowledge, whether or not such activity has been authorized by Comcast. Comcast shall not record or retain any information transmitted between a Subscriber and any third party, except as required for lawful business purposes.

(d) Except as permitted by Section 631 of the Cable Act as amended, neither Comcast nor its designee nor its employees shall make available to any third party, including the City, information concerning the viewing habits or subscription package decisions of any individual Subscriber. If a court authorizes or orders such disclosure, Comcast shall notify the Subscriber prior to disclosure, unless such notification is otherwise prohibited by applicable law or the court.

(e) Upon a request by a Subscriber, Comcast shall make available for inspection at a reasonable time and place all personal Subscriber information that Comcast maintains regarding said Subscriber. Comcast shall ensure that all information related to billing and service requests is accurate and up to date and shall promptly correct any errors upon discovery.

(f) Comcast shall not make its Subscriber list or lists, or any portion thereof, available to any other person or entity, with or without remuneration, except where expressly permitted by law.

## **SECTION 6**

### **SERVICES TO THE COMMUNITY**

#### **6.1 SERVICES TO COMMUNITY FACILITIES**

Upon request of the Managing Director of the City or his/her designee at each facility, Comcast shall, at no charge to the City, provide the following services to all present and future public facilities including, but not limited to, the City Hall, police stations, fire companies, ambulance services, public works buildings, all public and private school buildings and public libraries:

(a) Within three (3) months of the Effective Date of this Agreement, one (1) cable Drop, outlet and Basic and Expanded Basic Services (or equivalent) package to each building identified in Exhibit A to this Agreement. No charge shall be made for installation or service, except that Comcast may charge and for installation and service for more than one (1) drop in each building.

(b) Within three (3) months of the Effective Date of this Agreement, high speed Internet service via cable modem to each building identified in Exhibit B to this Agreement, plus ten (10) additional facilities to be designated by the City upon request, and public and private school (K-12) buildings and public libraries. Comcast may charge for installation beyond two hundred (200) feet aerial distance from the cable plant and service for more than one (1) outlet in each building.

(c) For the purposes of this section, the term "school" means an educational institution that receives funding pursuant to Title I of the Elementary and Secondary Education Act of 1965, 20 U.S.C. § 6301 et seq., as amended, and does not mean "home schools."

#### **6.2 PUBLIC, EDUCATIONAL AND GOVERNMENTAL CHANNELS**

##### **(a) General Provisions**

(1) As of the Effective Date of this Agreement, Comcast provides the City with one (1) public access channel, one (1) educational access channel, and one (1) governmental access

channel. Comcast shall continue to provide these three (3) access channels to the City throughout the term of this Agreement.

(2) Comcast is required to provide the City with public, educational, and governmental ("PEG") access channels in accordance with Section 611 of the Cable Act. The PEG channels are for the exclusive use of the City and/or its designees. The channels shall be used for community programming related to public, educational and governmental activities. Their purpose is to contribute to an informed citizenry by, among other things, showing local government at work, responding to local community needs, and bringing education into the home. The City shall have complete control over the content, scheduling, administration and all other aspects of the PEG channels and may delegate such functions to an appropriate designee. Comcast shall not exercise any editorial control over PEG channel programming.

(3) To enable the City and/or its designees to utilize the PEG channels, the City shall select, and Comcast shall connect to the Cable System, origination points corresponding to such channels. Specifically, Comcast shall provide and install, at its sole cost and expense, cable, wire, lines, and/or other necessary signal distribution equipment such that live or tape playback of cablecasts or other programming can originate from these selected locations and be distributed via the Cable System to Subscribers in the City. These cables and other signal distribution equipment shall be collectively known as "Return Lines." The installation and maintenance of the Return Lines by Comcast shall meet or exceed all technical performance and other technical standards of the FCC, the National Electrical Safety Code, the National Electric Code, and any other applicable laws and regulations. As of the Effective Date of this Agreement, Comcast maintains Return Lines for one (1) public access, one (1) educational access, and one (1) governmental access channel. Comcast shall continue to maintain these three (3) Return Lines at its sole cost and expense. Comcast shall distribute the video signals for the PEG channels in high quality resolution.

(4) Comcast shall provide the City with a franchise grant for improvement of its technical infrastructure or for any other public purpose. The grant shall be in the amount of One Hundred Sixty Thousand Dollars (\$160,000). The grant shall be disbursed as follows: Eighty Thousand Dollars (\$80,000) within forty-five (45) days of the Effective Date of the Agreement and Eighty Thousand Dollars (\$80,000) within one hundred eighty (180) days of the Effective Date of the Agreement.

(5) The City and Comcast agree that any and all costs incurred by Comcast for providing PEG channels and supporting such channels, including

any and all equipment, capital grants, and maintenance and repair, may be designated by Comcast as "costs of franchise requirements" or "external costs" as defined by the FCC, except that it is mutually agreed that such costs shall not be itemized on Subscribers' bills. Other than the access support specifically agreed to in this Agreement, Comcast shall not be required to provide technical or production staff, or obtain equipment or studio facilities for Public, Educational and Governmental access programming.

(b) Public Access Channel

(1) As of the Effective Date of this Agreement, Comcast provides one (1) public access channel for use by the City or its designee. The City hereby designates Berks Community Television ("BCTV") or its successor as the administrator of the City's public access channel or channels. This designation is at the discretion of the City in accordance with the Memorandum of Understanding between the City and BCTV, and the designation is terminable at will by the City.

(2) As administrator of the City's public access channel(s), BCTV maintains a television studio, equipment, and production staff as part of its commitment to providing valuable community programming.

(c) Educational Access Channel

(1) As of the Effective Date of this Agreement, Comcast provides one (1) educational access channel for use by the City or its designee. The Reading School District is the administrator of the City's educational access channel. The City shall continue to designate the School District as the administrator of the current educational access channel throughout the term of this Agreement.

(d) Governmental Access Channel

(1) As of the Effective Date of this Agreement, Comcast provides one governmental access channel for use by the City or its designee. The City hereby designates BCTV or its successor as the administrator of the City's governmental access channel. This designation is at the discretion of the City in accordance with the Memorandum of Understanding between the City and BCTV, and the designation is terminable at will by the City.

**SECTION 7**  
**REGULATION BY CITY**

## **7.1 RIGHT TO INSPECT**

(a) The City shall have the right, upon twenty (20) business days written notice and during Normal Business Hours, to inspect at the notice location for Comcast specified in Section 13.3 below all documents, records and other pertinent information maintained by Comcast which relate to the terms of this Agreement.

(b) In addition, Comcast shall maintain for inspection by the public and the City all records required by the FCC and as specified in 47 C.F.R. §76.305 in the manner specified therein.

(c) Notwithstanding anything to the contrary set forth herein, all information specifically marked by Comcast as proprietary or confidential in nature and furnished to the City or its designated representatives shall be treated as confidential so long as it is permitted to do so under applicable law. Information and documentation marked by Comcast as proprietary or confidential shall include a brief written explanation as to its proprietary nature or confidentiality subject to review by the City. The City and its officially designated representatives agree in advance to treat any such information or records which Comcast reasonably deems would provide an unfair advantage for Comcast's competitors (e.g., system design maps, engineering plans, programming contracts, etc.) as confidential so long as permitted to do so under applicable law and only to disclose it to City employees, agents, or representatives who have a need to know or in order to enforce the provisions of this Agreement. In the event a request is made by an individual or entity not an employee, agent or representative of the City acting in their official capacity for information related to the franchise and marked by Comcast as confidential and/or proprietary, the City shall notify Comcast of such request. Comcast shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act, or information which is not relevant to regulation of the Franchise (e.g., employee files, tax returns, etc.).

## **7.2 RIGHT TO CONDUCT COMPLIANCE REVIEW**

The City or its representatives may conduct a full compliance review, including possible public hearings, with respect to whether Comcast has complied with any material term of this Agreement so long as it provides Comcast with thirty (30) days written notice in advance of the commencement of any such reviews or public hearings.

### **7.3 RIGHT TO REGULATE RATES**

(a) The City has the right to regulate Cable Service rates to the extent authorized by applicable federal law.

(b) Comcast shall file all required FCC forms and documentation for any increase in the rates or charges for any Cable Service or equipment subject to regulation with the City on or before the notification period required by applicable federal law.

### **7.4 RESERVED AUTHORITY**

The City reserves the regulatory authority arising from the Cable Act, any amendments thereto, and any other relevant federal or state laws or regulations.

## **SECTION 8** **REPORTING REQUIREMENTS**

### **8.1 QUARTERLY FRANCHISE FEE REPORT**

In accordance with Section 2.3 of this Agreement, Comcast shall accompany each quarterly franchise fee payment with a written report containing an accurate statement of Comcast's Gross Revenues received for the quarter in connection with the operation of Comcast's Cable System and a brief report showing the basis for computation of fees. The report will contain a line item for every source of revenue received and the amount of revenue received from each source. The report shall be verified by a financial representative of Comcast.

### **8.2 ANNUAL FINANCIAL REPORT**

Upon request, Comcast shall submit to the City, not later than ninety (90) days after the completion of each fiscal year, statements pertaining to Comcast's financial condition. Such statements shall include a statement of income, a balance sheet, a statement of sources and applications of funds, statement of all capital expenditures, and a depreciation schedule, all of which shall be certified by Comcast's Chief Financial Officer in accordance with Generally Accepted Accounting Principles. In addition, this annual financial report shall include a list of the current officers of Comcast, a list of all current members of the Board of Comcast and its parent corporation. Submission of the most recent U.S. Securities and Exchange Commission Annual Report Form 10-K prepared by Comcast shall be deemed as a satisfactory compliance of this Section 8.2. Upon request, Comcast shall submit to the City monthly subscriber counts in the City for the applicable fiscal year.

### **8.3 CUSTOMER COMPLAINT REPORT**

Upon written request, Comcast shall submit to the City a report showing the number of Complaints, as defined in Section 14 below, that have generated a work order and/or necessitated a response originating from the City within the prior twelve (12) month period. The report shall note the number of Complaints and the general nature of the Complaints generating the calls and summary descriptions of the resolutions of the Complaints.

### **8.4 GOVERNMENT REPORTS**

Comcast shall provide to the City, upon written request, copies of any and all communications, reports, documents, pleadings and notifications of any kind which Comcast has submitted to any federal, state or local regulatory agencies if such documents relate to Comcast's Cable System within the City. Comcast shall provide copies of such documents no later than thirty (30) days after their request. Comcast and the City shall comply with the terms and conditions regarding confidentiality as set forth in Section 7.1 (c) of this Agreement.

## **SECTION 9**

### **FRANCHISE VIOLATIONS, DAMAGES AND REVOCATION**

## **9.1 VIOLATIONS**

(a) If the City has reason to believe that Comcast violated any provision of this Agreement, it shall notify Comcast in writing of the nature of such violation and the section of this Agreement that it believes has been violated. If the City does not notify Comcast of any violation of this Agreement, it shall not operate as a waiver of any rights of the City hereunder or pursuant to applicable law.

(b) Comcast shall have thirty (30) days to cure such violation after written notice is received by taking appropriate steps to comply with the terms of this Agreement. If the nature of the violation is such that, in the City's reasonable judgment, it cannot be fully cured within thirty (30) days due to circumstances outside of Comcast's control, the period of time in which Comcast must cure the violation may be extended by the City in writing for such additional time necessary to complete the cure, provided that Comcast shall have promptly commenced to cure and is diligently pursuing its efforts to cure in the reasonable judgment of the City.

(c) If the violation has not been cured within the time allowed under Section 9.1(b) above, then Comcast shall be liable for liquidated damages and the City's costs in accordance with Section 9.2 below.

## **9.2 LIQUIDATED DAMAGES**

(a) Because Comcast's failure to comply with provisions of this Agreement will result in injury to the City and because it will be difficult to measure the extent of such injury, the City may assess liquidated damages against Comcast in the following amounts provided Comcast has had an opportunity to cure in accordance with Section 9.1(b). Such damages shall not be a substitute for specific performance by Comcast, but shall be in addition to such performance.

(b) **The first day for which liquidated damages may be assessed, if there has been no cure after the end of the applicable cure period, shall be the day after the end of the applicable cure period, including any extension of the cure period granted by the City. Liquidated damages may not be assessed for a time period exceeding one hundred and twenty (120) days,**

**after which the City may commence revocation proceedings and/or initiate an action in law or equity in a court of competent jurisdiction.**

(c) The City may assess liquidated damages against Comcast in the following amounts provided Comcast has had an opportunity to cure in accordance with Section 9.1(b).

- (a) For failure to submit franchise fee payments in a timely fashion as specified in Section 2: \$150 per day for each day the violation continues;
- (b) For failure to comply with the technical requirements specified in Section 3.1: \$250 per day for each day the violation continues;
- (c) For failure to provide and maintain Cable Service as specified in Section 3.2: \$250 per day for each day the violation continues;
- (d) For failure to obtain and maintain permits as specified in Section 3.3: \$150 per day for each day the violation continues;
- (e) For failure to make repairs and restorations as specified in Section 3.4: \$150 per day for each day the violation continues;
- (f) For failure to disconnect, relocate, or remove equipment as specified in Section 3.8 and 3.9: \$150 per day for each day the violation continues;
- (g) For failure to comply with the Cable System specifications or the state-of-the-art requirements specified in Sections 4.1 and 4.2: \$250 per day for each day the violation continues;
- (h) For failure to comply with any customer service standard as specified in Section 5: \$150 per day for each day the violation continues;
- (i) For failure to provide services to the community as specified in Section 6: \$250 per day for each day the violation continues;
- (j) For failure to permit the right of inspection as specified in Section 7.2: \$150 per day for each day the violation continues;
- (k) For failure to submit reports in a timely fashion as specified in

Section. 8: \$100 per day for each day the violation continues;

- (l) For failure to provide a performance bond as specified in Section 9.3: \$150 per day for each day the violation continues;
- (m) For failure to comply with programming requirements as specified in Section 10: \$150 per day for each day the violation continues;
- (n) For failure to comply with the indemnification requirements as specified in Section 11.1: \$250 per day for each day the violation continues;
- (o) For failure to carry all the insurance required in Section 11.2: \$150 per day for each day the violation continues;
- (p) For failure to comply with transfer or renewal provisions as specified in Section 12: \$150 per day for each day the violation continues;
- (q) For failure to comply with the removal of system requirements as specified in Section 13.2: \$250 per day for each day the violation continues.

### **9.3 PERFORMANCE BOND**

(a) Comcast shall obtain and maintain during the franchise term, at its sole cost and expense, a performance bond running to the City with a company surety licensed to do business in the Commonwealth of Pennsylvania to ensure Comcast's faithful performance of its obligations. The performance bond shall provide that the City may recover from the principal and surety any and all liquidated damages and/or compensatory damages incurred by the City for Comcast's violations of this Agreement, after notice and opportunity to cure, in accordance with Sections 9.1 and 9.2 above.

(b) The performance bond shall be in the amount of One Hundred Thousand Dollars (\$100,000). Comcast shall not reduce, cancel or materially change said bond from the requirement contained herein without the express prior written permission of the City.

### **9.4 REVOCATION**

(a) In addition to the other rights, powers and remedies retained by the City under this Agreement, the City reserves the separate and distinct right to revoke this franchise if:

(1) It is demonstrated that Comcast practiced any fraud or deceit upon the City in its operation of its Cable System or any other activities pursuant to this Agreement;

(2) Comcast repeatedly fails, after notice and opportunity to cure, to maintain signal quality pursuant to the standards provided for by the FCC or the technical requirements set forth in Section 3.1 of this Agreement;

(3) Comcast repeatedly violates, after notice and opportunity to cure, one or more of the material terms or conditions of this Agreement.

(b) The foregoing shall not constitute a violation of a material term or condition if the violation occurs without the fault of Comcast or occurs as a result of circumstances beyond its control or by reason of Force Majeure as defined in Section 13.1. Comcast shall not be excused from the performance of any of its obligations under this franchise by mere economic hardship or by the misfeasance or malfeasance of its directors, officers or employees.

(c) A revocation shall be declared only by a written decision of the Reading City Council after an appropriate public hearing that shall afford Comcast due process and full opportunity to be heard. This shall include the ability to introduce evidence, to question witnesses and to respond to any notice of grounds to terminate in accordance with the standards of a fair hearing applicable to administrative hearings in the Commonwealth of Pennsylvania. All notice requirements shall be met by providing Comcast at least forty-five (45) days prior written notice (via certified mail-return receipt requested) of any public hearing concerning the proposed revocation of this franchise. Such notice shall state the grounds for revocation. The Reading City Council, after a public hearing and upon finding the existence of grounds for revocation, may either declare this franchise revoked or excuse such grounds upon a showing by Comcast of mitigating circumstances or good cause for the existence of such grounds. The City shall issue such declaration and finding in a written decision which the City shall promptly send via certified or overnight mail to Comcast.

## **SECTION 10** **PROGRAMMING**

## **10.1 CHANNEL CAPACITY**

Comcast shall meet or exceed programming and channel capacity requirements set forth in this Agreement and required by federal and state law and regulations.

## **10.2 BROADCAST CHANNELS**

Comcast shall offer all Subscribers with Basic Service including, but not limited to: 1) all broadcast television signals carried in fulfillment of the requirements of Section 614 of the Cable Act; and 2) qualified local non-commercial educational television signals in fulfillment of the requirements of Section 615 of the Cable Act. All such signals shall be delivered to Subscribers in high quality resolution.

## **10.3 SIGNAL SCRAMBLING**

Comcast shall at all times comply with FCC regulations regarding scrambling or other encryption of audio and video signals.

## **10.4 CONTINUITY OF SERVICE**

Subscribers shall continue to receive service from Comcast provided their financial and other obligations to Comcast are honored. Subject to the force majeure provisions in Section 13 of this Agreement, Comcast shall use its best efforts to ensure that all Subscribers receive continuous, uninterrupted service regardless of the circumstances. For the purpose of construction, routine repairing or testing of the Cable System, Comcast shall use its best efforts to interrupt service only during periods of minimum use. When necessary service interruptions of more than twenty-four (24) hours can be anticipated, Comcast shall notify Subscribers in advance of such service interruption.

## **10.5 PARENTAL CONTROL CAPABILITY**

Upon request, Comcast shall provide Subscribers with the capability to control the reception of any video and/or audio channel on the Cable System

providing sexually explicit adult programming.

## **10.6 SERVICE TIER REQUIREMENTS**

(a) Comcast shall not require Subscribers in the City to purchase a particular video service tier, other than Basic Service Tier, in order to obtain access to video programming offered on a per-channel or per-program basis, unless Comcast has been granted a waiver by the FCC pursuant to Section 623(b)(8)(c) of the Cable Act.

## **SECTION 11 LIABILITY AND INDEMNIFICATION**

### **11.1 INDEMNIFICATION**

Comcast shall, at its sole cost and expense, indemnify, defend and hold harmless the City, its elected and appointed officials, its officers, agents and employees acting in their official capacities, from any and all claims for injury, loss, liability, cost or expense arising in whole or in part from, incident to or connected with any act or omission of Comcast, its officers, agents or employees, including contractors and subcontractors, arising out of the construction, installation, upgrade, reconstruction, operation, maintenance or removal of the Cable System or any other equipment or facilities. Comcast's indemnification obligations shall commence upon timely receipt of notice in writing from the City of the City's receipt of a claim or action pursuant to this Section. The obligation to indemnify, defend and hold the City harmless shall include, but not be limited to, the obligation to pay judgments, injuries, liabilities, damages, and reasonable attorneys' fees.

### **11.2 INSURANCE**

(a) Comcast shall maintain insurance throughout the term of this Agreement with the City as an additional insured, with an insurance company which is authorized to conduct business in Pennsylvania and which has an A.M. Best rating (or equivalent) no less than "A minus VII", indemnifying the City from and against any and all claims for injury or damage to persons or property, both

real and personal, caused by the construction, installation, reconstruction, operation, maintenance or removal of the Cable System by Comcast or any of its contractors, subcontractors, agents or employees in the following amounts:

(1) The amount of such insurance against liability for damage to property shall be no less than One Million Dollars (\$1,000,000) as to any one (1) occurrence.

(2) The amount of such insurance against liability for injury or death to any person shall be no less than One Million Dollars (\$1,000,000).

(3) The amount of such insurance for excess liability shall be Three Million Dollars (\$3,000,000) in umbrella form.

(b) All insurance coverage shall be maintained throughout the period of this Agreement. All insurance policies shall contain a provision that the City will receive thirty (30) days written notice prior to any changes or cancellation of the policy. All expenses incurred for said insurance shall be at no cost to the City.

(c) A certificate evidencing the insurance coverage required herein shall be provided by Comcast to the City upon request.

## **SECTION 12**

### **FRANCHISE TRANSFER AND RENEWAL**

#### **12.1 TRANSFER, ASSIGNMENT OR CHANGE IN CONTROL**

(a) Neither Comcast nor its parent nor any Affiliated Entity shall transfer, assign or otherwise encumber, through its own action or by operation of law, its right, title or interest in the Cable System or in this Agreement without the prior written consent of the City.

(b) Neither Comcast nor its parent nor any Affiliated Entity shall change, transfer or assign, through its own action or by operation of law, its control of the Cable System or of this Agreement without the prior written consent of the City.

(c) Neither Comcast nor its parent nor any Affiliated Entity shall sell, convey, transfer, exchange or release more than fifty percent (50%) of its

equitable ownership in the Cable System without the prior written consent of the City.

(d) No such consent shall be required for (i.) a transfer in trust, by mortgage, hypothecation, or by assignment to a financial institution of any rights, title or interest of Comcast in the Agreement or in the Cable System in order to secure indebtedness; or (ii.) a transfer to an Affiliated Entity.

(e) Comcast shall make written application to the City of any transfer, change in control or assignment as described above and shall provide all information required by FCC Form 394 and any other applicable federal, state, and local statutes and regulations regarding transfer or assignment. Within thirty (30) days of receiving a request for transfer, the City, in accordance with the Cable Act and FCC rules, shall notify Comcast in writing of the additional information it requires to determine the legal, financial, and technical qualifications for the transferee or new controlling party. The City shall have one hundred twenty (120) days from the receipt of all required information to take action on the transfer or assignment.

(f) Any consent by the City for any transfer or assignment described above shall not be effective until the proposed transferee or assignee shall have executed a legally binding agreement stating that it shall be bound by all the terms and conditions contained in this Agreement.

## **12.2 RENEWAL**

The City and Comcast agree that any proceedings or activities that relate to the renewal of Comcast's franchise shall be governed by applicable federal law.

## **SECTION 13 MISCELLANEOUS**

### **13.1 FORCE MAJEURE**

If for any reason of Force Majeure, Comcast is unable in whole or in part to carry out its obligations hereunder, Comcast shall not be deemed in violation of this Agreement during the continuance of such inability. The term "Force Majeure" as used herein shall have the following meaning: acts of God; acts of public enemies, including terrorist attacks; orders of any kind of the government of the United States of America or of the Commonwealth of Pennsylvania or any of their departments, agencies, political subdivisions, or officials, or any civil or military authority; insurrections, riots, labor strikes, epidemics; landslides; lightning; earthquakes; fires; hurricanes; volcanic activity; storms; floods; washouts; droughts; explosions; and partial or entire failure of utilities.

### **13.2 REMOVAL OF SYSTEM**

(a) Upon lawful denial of renewal or revocation of this Agreement, Comcast shall remove its supporting structures, poles, transmissions and distribution systems and other appurtenances ("System") from the streets, ways, lanes, alleys, parkways, bridges, highways, and other public and private places in, over, under, or along which they are installed and shall restore the areas to their original condition. If such removal is not completed within three (3) months of such lawful denial of renewal or revocation, the City or property owner may deem any property not removed as having been abandoned and the City may place a lien on such property.

(b) During the term of the Agreement, if Comcast decides to abandon or no longer use all or part of its Cable System, it shall give the City written notice of its intent at least ninety (90) days prior to such decision, which notice shall describe the property and its location. The City shall have the right to either require Comcast to remove the property, remove the property itself and charge Comcast with the costs related thereto, or transfer ownership of the property to the City's designee provided fair market value (as mutually determined by Comcast and the City's designee) is paid to Comcast.

(c) Notwithstanding the above, Comcast shall not be required to remove its System, or to sell the System, or any portion thereof as a result of revocation, denial of renewal, or any other lawful action to forbid or disallow Comcast from providing Cable Services, if the System is actively being used to provide any services other than Cable Services and such services are not governed by Title VI of the Communications Act of 1934, as amended, or any

portion thereof.

### **13.3 NOTICES**

Every notice or payment to be served upon or made to the City shall be sent to:

Mayor  
City of Reading  
815 Washington Street, Room 2-27  
Reading, PA 19601-3690

The City may specify any change of address in writing to Comcast.

Every notice to be served upon Comcast shall be sent to:

Comcast of New Mexico/Pennsylvania, LLC  
400 Riverfront Drive  
Reading, PA 19602  
Attention: General Manager

With a copy to:

Comcast  
1500 Market Street  
Philadelphia, PA 19102  
Attention: Government Affairs Department

Comcast may specify any changes of address in writing to the City.

Each delivery to Comcast or the City shall be equivalent to direct personal notice, direction or order, and shall be deemed to have been given at the time of receipt.

### **13.4 EQUAL EMPLOYMENT OPPORTUNITY**

Comcast is an equal opportunity employer and shall comply with all applicable federal and state laws and regulations regarding equal opportunity

employment.

### **13.5 CAPTIONS**

The captions for sections throughout this Agreement are intended solely to facilitate reading and reference to the sections and provisions of this Agreement. Such captions shall not affect the meaning or interpretation of this Agreement.

### **13.6 GOVERNING LAW**

This Agreement shall be governed and construed by and in accordance with the laws of the Commonwealth of Pennsylvania. If suit is brought by a party to this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of Pennsylvania, County of Berks, or in the United States District Court for the Eastern District of Pennsylvania.

### **13.7 ENTIRE AGREEMENT**

This written instrument and any related side agreements contain the entire agreement between the parties, supersedes all prior agreements or proposals whether written or oral except as specifically incorporated herein, and cannot be changed without written amendment approved by both the City and Comcast. This Franchise Agreement supersedes all prior agreements or ordinances, or parts of agreements or ordinances that are in conflict with the provisions herein.

### **13.8 SEVERABILITY**

If any section, provision or clause of this Agreement is held by a court of competent jurisdiction to be unlawful, invalid or unenforceable, or is pre-empted by federal or state laws or regulations, such section, provision or clause shall be deemed to be severable from the remaining portions of this Agreement and shall not affect the legality, validity or enforceability of the remaining portions of this Agreement.

### **13.9 CHANGE OF LAW**

In the event there is a change in a federal or state statute or regulation applicable to the Cable System or to this Agreement, the City or Comcast may

notify the other party of its desire to amend this Agreement in order to comply with the change in statute or regulation. The City and Comcast may amend this Agreement to comply with such change in statute or regulation provided such amendment is approved by the City and Comcast.

### **13.10 NO THIRD-PARTY BENEFICIARIES**

Nothing in this Franchise Agreement is or was intended to confer third-party beneficiary status on any other person to enforce the terms of this Agreement.

### **13.11 APPLICABILITY OF AGREEMENT**

All of the provisions in this Agreement shall bind Comcast, the City and their respective successors and assigns. This Agreement is authorized by Resolution No. \_\_\_\_\_ dated \_\_\_\_\_, 2006 of the Reading City Council.

## **SECTION 14** **DEFINITIONS**

The following terms used in this franchise shall have the following meanings:

(a) Affiliated Entity - Any corporation, partnership or other business entity that owns or controls, is owned or controlled by, or is under common ownership or control with Comcast.

(b) Basic Service - That service tier which shall include at least the retransmission of local broadcast television signals.

(c) Broadcast - Over-the-air transmission by a television or radio station.

(d) Cable Service - The one-way transmission to Subscribers of video programming or other programming service and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

(e) Cable System - A facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the City, but such term does not include (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves Subscribers without using any public right-of-way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Cable Communications Act, except that such facility shall be considered a Cable System (other than for purposes of Section 621 of the Cable Communications Act) to the extent that facility is used in the transmission of video programming directly to Subscribers unless the extent of that use is solely to provide interactive on-demand services; (D) an open video system that complies with Section 653 of the Cable Communications Act; or (E) any facilities of any electric utility used solely for operating its electric utility systems.

(f) Complaint - Any written or oral communication by a Subscriber expressing dissatisfaction with any aspect of Comcast's business or the operation of its Cable System.

(g) Drop - The coaxial or fiber optic or other cable that connects a home or building to the Cable System.

(h) FCC - Federal Communications Commission.

(i) Gross Revenues - All revenue calculated in accordance with Generally Accepted Accounting Principles ("GAAP") received directly or indirectly by Comcast derived from the operation of Comcast's Cable System in the City to provide Cable Services. Gross Revenues shall include, but are not limited to, the following:

- (1) Basic Service fees;
- (2) fees charged to Subscribers for all service tiers other than Basic Service, including digital programming tiers;
- (3) fees charged for premium services;
- (4) fees charged to Subscribers for any optional, per-channel or per-program services;
- (5) revenue from the provision of any other Cable Services;
- (6) charges for installation, additional outlets, relocation, disconnection, reconnection and change-in-service fees for

- video or audio programming;
- (7) fees for downgrading any level of Cable Service programming;
- (8) fees for service calls;
- (9) fees for leased access channels;
- (10) rental or sales of any and all Subscriber equipment, including converters and remote control devices;
- (11) studio rental, production equipment and personnel fees;
- (12) any and all advertising revenues, including national, regional, and local advertising revenues received by the local area system, excluding prior commissions paid to agencies;
- (13) locally-derived revenues or commissions from home shopping channels;
- (14) revenue from interactive television services;
- (15) fees for any and all music services;
- (16) fees for video-on-demand;
- (17) sales of hard copy program guides;
- (18) late payment fees;
- (19) NSF check charges; and
- (20) franchise fees.

Gross Revenues shall not include bad debts or any taxes on services furnished by Comcast and imposed directly upon any Subscriber or user by the City, state, federal or other governmental unit.

j) Normal Business Hours - Those hours during which most similar businesses in the community are open to serve customers. In all cases, "Normal Business Hours" must include some evening hours at least one night per week and/or some weekend hours.

(k) Normal Operating Conditions - Business conditions within Comcast's service department which are within the control of Comcast. Those conditions that are not within the control of Comcast include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages and severe or unusual weather conditions.

(l) Outlet - An interior receptacle that connects a television set to the Cable System.

(m) Programming - Any video or audio signal carried over the Cable System.

(n) Service Interruption - The loss of picture or sound on one (1) or more channels.

(o) Subscriber - A person or entity who contracts with Comcast for, and lawfully receives Cable Services distributed by the Cable System.

WITNESS our hands and official seals, this \_\_\_\_ day of \_\_\_\_\_ 2006.

ATTEST

CITY OF READING

\_\_\_\_\_

By: \_\_\_\_\_

Name (Print): \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

COMCAST OF NEW  
MEXICO/PENNSYLVANIA, LLC.

\_\_\_\_\_

By: \_\_\_\_\_

Name (Print): \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## **APPENDIX A**

### **LIST OF DESIGNATED LOCATIONS FOR CABLE SERVICE**

City Hall  
8<sup>th</sup> & Washington Streets  
Reading, PA 19601

City Hall Annex  
815 Washington Street  
Reading, PA 19601

City Garage  
501 N. 6<sup>th</sup> Street  
Reading, PA 19601

Police Academy Building  
400 St. Bernadine Street  
Reading, PA 19601

Police Athletic League  
325 Walnut Street  
Reading, PA 19601

Police Pistol Range Office  
2501 Bernville Road  
Reading, PA 19605

Police Kennel Office  
2501 Bernville Road  
Reading, PA 19605

Public Works Building  
503 North 6<sup>th</sup> Street  
Reading, PA 19601

Rainbow Fire Station  
27 North 8<sup>th</sup> Street  
Reading, PA 19601

Neversink Fire Station  
23 North 3<sup>rd</sup> Street  
Reading, PA 19601

Friendship Fire Station  
620 Franklin Street  
Reading, PA 19602

Washington Fire Station  
1019 Spruce Street  
Reading, PA 19602

Marion Fire Station  
1155 North 9<sup>th</sup> Street  
Reading, PA 19604

Riverside Fire Station  
950 McKnight Street  
Reading, PA 19601

Oakbrook Fire Station  
(Leased from VFC)  
628 Park Avenue  
Reading, PA 19611

Liberty Fire Station  
(Leased from VFC)  
501 South 5<sup>th</sup> Street  
Reading, PA 19602

EMS Station  
638 Walnut St./132-134 Reed St.  
Reading, PA 19602

Main Library  
102 South 5<sup>th</sup> Avenue  
Reading, PA 19602

Northwest Branch Library  
901 Schuylkill Avenue  
Reading, PA 19601

Southwest Branch Library  
1426 Perkiomen Avenue  
Reading, PA 19602

Northeast Branch Library  
1348 North 11<sup>th</sup> Street  
Reading, PA 19604

Municipal Stadium Complex  
1907 North Front Street  
Reading, PA 19601  
(non-public area only)

Pagoda  
Skyline Drive  
Reading, PA 19606

Recreation Center  
3<sup>rd</sup> & Spruce Streets  
Reading, PA 19611

Recreation Center  
11<sup>th</sup> & Pike Streets  
Reading, PA 19604

BARTA  
1700 North 11<sup>th</sup> Street  
Reading, PA 19604

Nature Center  
Hill & Angora Roads  
Reading, PA 19606

Pendora Park Fieldhouse  
1800 Forest Street  
Reading, PA 19606

Admin & Control Building  
760 Morgantown Road  
Reading, PA 19607

Conservancy Offices  
25 North 11<sup>th</sup> Street  
Reading, PA 19601

Wastewater Treatment Plant  
Rte. 10 Morgantown Road  
Reading, PA 19611  
(City Public Works Dept. to dig  
trench for this underground  
connection)

## **APENDIX B**

### **LIST OF DESIGNATED LOCATIONS FOR CABLE MODEM INTERNET SERVICE**

Police Academy Building  
400 St. Bernadine Street  
Reading, PA 19601

Police Athletic League  
325 Walnut Street  
Reading, PA 19601

EMS Station  
638 Walnut St./132-134 Reed St.  
Reading, PA 19602

Wasterwater Treatment Plant  
Rte. 10 Morgantown Road  
Reading, PA 19611  
(Business Class Service)  
(City Public Works Dept. to dig trench for this underground connection)